

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----X  
FRANCIS HENRY RUGGIERO,  
Plaintiff,

v.

SERGEANT K. LYONS, DR. SALWA KHOURI,  
and HEALTH SERVICE ADMINISTRATOR  
IBELLIS DIAZ,  
Defendants.  
-----X**ORDER**

19 CV 3632 (VB)

On April 22, 2019, plaintiff, proceeding pro se and in forma pauperis, commenced this action. On June 12, 2019, the Court noted in its Order of Service that it is plaintiff's responsibility to notify the Court in writing if plaintiff's address changes and that this case may be dismissed if plaintiff fails to do so. (Doc. #8 at ECF 3).

On August 28, 2020, the Court scheduled an initial conference on October 14, 2020, at 9:30 a.m., to proceed by telephone. (See Doc. #77). This notice instructed the parties to confer at least 21 days prior to the conference date and attempt in good faith to agree upon a proposed discovery plan. (Id.). Chambers mailed a copy of this notice to plaintiff at the address on the docket. (Id.). On September 29, 2020, the Court ordered the parties to file on the ECF docket their proposed Civil Case Discovery Plan and Scheduling Order by October 12, 2020, at 5:00 p.m. (Doc. #82). Chambers mailed a copy of this Order to plaintiff at the address on the docket. (Id.). Neither of these documents were returned to the Court as undeliverable.

On October 8, 2020, counsel for Sgt. Lyons and counsel for Dr. Khouri and Health Service Administrator Diaz submitted a joint letter stating they have made numerous efforts to contact plaintiff to comply with the Court's September 29, 2020, Order, but have not received any response from plaintiff. (Doc. #83). Furthermore, counsel for defendants indicate that in

another case plaintiff commenced against the County of Orange and its medical provider, Ruggiero v. County of Orange et al, 20cv7693 (VB), plaintiff testified under oath “that he no longer intends to prosecute the instant action and he believes he sent a letter to this Court requesting to withdraw this action.” (Doc. #83 at ECF 1). Defense counsel also noted a copy of this transcript can be provided to the Court. (Id. n.1).

Defense counsel further explained that plaintiff testified he resides at a different address from the one listed on the docket, and moreover, that plaintiff’s counsel in the other action, 20cv7693, informed defense counsel that plaintiff had in fact moved to a third residence more recently. (Doc. #83). Defense counsel notes that despite having sent copies of the Court’s August 28, 2020, Notice and September 29, 2020, Order, as well as a stipulation of dismissal, to plaintiff at these updated addresses, defense counsel have not received any return mail or any other response from plaintiff. (Id.).

To date, there is no indication on the docket that plaintiff has withdrawn this case. The last filing plaintiff made in this case is a Notice of Change of Address form filed on December 30, 2019. (Doc. #70).

Accordingly, it is HEREBY ORDERED:

1. The October 14, 2020, conference shall proceed as scheduled. If all parties appear at the conference, the Court will then discuss and set the Civil Case Discovery Plan and Scheduling Order at that time. **If plaintiff fails to appear at the October 14, 2020, teleconference, the Court will deem plaintiff to have abandoned his case, and may dismiss the case for failure to prosecute or comply with Court Orders. See Fed. R. Civ. P. 41(b).**
2. By October 12, 2020, defense counsel shall file on the ECF docket an **excerpt** of the relevant portions of plaintiff’s Section 50h hearing transcript, including the relevant first

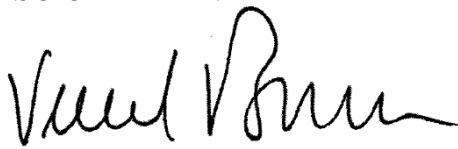
pages of the transcript identifying when and where the deposition occurred and for what matter, as well as the transcript pages where plaintiff purportedly testified that (1) he no longer wishes to prosecute the instant action, and (2) he told the Court that he has withdrawn this action.

3. By October 12, 2020, counsel for defendants shall send by overnight mail a copy of this Order to plaintiff at the addresses they last contacted plaintiff and file proof of service of the same on the ECF docket.

Chambers will mail a copy of this Order to plaintiff at the address on the docket.

Dated: October 9, 2020  
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti  
United States District Judge